

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHESTERFIELD ) FOR THE FOURTH JUDICIAL CIRCUIT

First-Citizens Bank & Trust Company and ) Civil Action No.: 2017-CP-13-00804  
Sadie M. Murvin, )  
Plaintiffs, )

v. )

Miranda Libby Murvin, a/k/a Miranda Libby )  
Murvin Zimmerman, and Great American )  
Life Insurance Company, )  
Defendants. )

NOTICE OF MOTION AND  
MOTION TO STRIKE

**RECEIVED**  
MAR 12 2019  
SC Court of Appeals

**TO: COUNSEL FOR GREAT AMERICAN LIFE INSURANCE COMPANY**

PLEASE TAKE NOTICE that the Plaintiffs, First Citizens Bank & Trust Company and Sade M. Murvin (“Plaintiffs”), by and through the undersigned attorneys, will move the Court on the tenth day hereafter, or as soon thereafter as counsel may be heard, for an order striking the motion for relief filed by Defendant Great American Insurance Company (“Defendant”) on March 1, 2019.

This motion is based upon the ground that Defendant appealed the final order of Special Referee to the Court of Appeals on October 9, 2018 and that appeal is currently pending. Defendant’s Notice of Appeal was filed with the Circuit Court on October 12, 2018. The parties are presently briefing Defendant’s issues on appeal as demonstrated by Exhibit 2 to Defendant’s new motion for relief.

Although Defendant’s appeal is currently pending, Defendant filed a new motion for relief with the trial court on March 1, 2019. Defendant filed its first motion for relief, entitled “Motion to Vacate Default Judgment” on April 16, 2018. This motion, which was based upon Rule 55(c),

SCRCP, and Rule 60(b)(1), SCRCP, was denied by order of the Special Referee on September 13, 2018. That order is the one presently on appeal.

Defendant's new motion cited Rule 55(c), SCRCP and Rule 60(b)(2) and (3), SCRCP. However, this new motion is based upon the same pleadings and same operative facts as the prior motion. This new motion directly concerns the matter on appeal, demonstrated by the fact that Defendant attached Plaintiffs' brief to its motion. Specifically, Defendant's new Rule 60 motion relies upon the exact same fact that purported to support its original Rule 60 motion—that the Amended Complaint contained a mistaken policy number and attached printout.

Therefore, Defendant's motion is in direct violation of Rule 60, SCRCP. Rule 60 states that, "During the pendency of an appeal, **leave to make the motion must be obtained from the appellate court.**" Rule 60, SCRCP (emphasis added). Defendant has filed its motion without seeking leave of the Court of Appeals where this matter is currently pending under case number 2018-001808.

Because Defendant has failed to obtain leave of the Court of Appeals to file its motion, this Court has no jurisdiction and Defendant's motion should be stricken. Our Supreme Court has previously held that an order granting a Rule 60(b) during the pendency of an appeal, where leave of the appellate court was not sought, is simply void because the trial court has no jurisdiction over the case. *See Hudson v. S.C. Dep't of Highways & Pub. Transp.*, 324 S.C. 245, 478 S.E.2d 839 (1996) (vacating the trial court's order Rule 60(b) order).

Because Defendant's actions have deprived the Court of jurisdiction to rule upon its motion for relief, Plaintiff respectfully requests that the Court strike Defendant's motion for the record.

*-signature page to follow-*

**BRUNER, POWELL, WALL & MULLINS, LLC**

*s/ Chelsea J. Clark*

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*Attorneys for the Plaintiffs*

March 8, 2019

Columbia, South Carolina

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March 8, 2019

**VIA US MAIL**

William O. Spencer, Special Referee

Spencer Law Firm

PO Box 190

Chesterfield, SC 29709

**RECEIVED**

MAR 12 2019

**SC Court of Appeals**

**Re: First-Citizens Bank & Trust Company and Sadie M. Murvin v. Mirdana Libby Murvin, a/k/a Miranda Libby Murvin Zimmerman, and Great American Life Insurance Company  
Civil Action No.: 2017-CP-13-00804, Appellate Case No. 2018-001808  
Our File No. 3-2951.2**

Dear Mr. Spencer:

Please find enclosed Plaintiffs' Motion to Strike, e-filed today in the above-captioned case, for which you are the Special Referee. Please let me know if you have any questions.

With my kindest regards, I am,

Sincerely,



Chelsea J. Clark, Esq.

CJC/hos

Enclosure

cc: Chad N. Johnston (by email)  
R. Walker Humphrey II (by email)  
Benjamin N. Thompson (by email)  
Samuel A. Slater (by email)  
Clerk of Court, S.C. Court of Appeals, PO Box 11629, Columbia, SC 29211

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